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101ST CONGRESS
*1st Session*

SENATE

REPORT
101-219

# REPORT

OF THE

# SELECT COMMITTEE ON INTELLIGENCE

# UNITED STATES SENATE

JANUARY 1, 1987 TO DECEMBER 31, 1988

NOVEMBER 20 (legislative day, NOVEMBER 6), 1989.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

39-010

WASHINGTON : 1989

5423-3

# PREFACE

The Senate Select Committee on Intelligence submits to the Senate a report of its activities from January 1, 1987, to December 31, 1988. The Committee has been charged by the Senate with the responsibility of carrying out oversight over the intelligence activities of the United States. Most of the work of the Committee is of necessity conducted in secrecy, yet the Committee believes that intelligence activities should be as accountable as possible to the public. This public report to the Senate is intended to contribute to that requirement.

DAVID L. BOREN,
*Chairman.*
WILLIAM S. COHEN,
*Vice Chairman.*

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# OVERSIGHT OVER INTELLIGENCE ACTIVITIES

NOVEMBER 20 (legislative day, NOVEMBER 6), 1989.—Ordered to be printed

Mr. BOREN, from the Select Committee on Intelligence, submitted the following

## REPORT

### I. INTRODUCTION

The Select Committee on Intelligence (SSCI) was established by the United States Senate on May 19, 1976, to conduct oversight of the programs and activities of the Intelligence Community. The following report has been written to fulfill the requirement of section 1 of Senate Resolution 400 which states that it would be the purpose of this Committee to "report to the Senate concerning * * * intelligence activities and programs" of the United States government. Many of the matters that came before the Committee are covered in detail later in this report. This introduction provides a broad overview of the activities during the 100th Congress which convened January 6, 1987, and adjourned October 22, 1988.

The 100th Congress began with the Committee under the new leadership of Chairman David L. Boren and Vice Chairman William S. Cohen. The new Committee leadership regime was immediately faced with completing the formal preliminary investigation into the Iran-Contra affair that the Committee had begun in the last days of the 99th Congress. Working through the January recess, the Committee completed the review and released a public report on January 29, 1987.

Early in 1987, The Chairman and Vice Chairman conducted a comprehensive review of Committee procedures and initiated a series of reforms which were adopted by the Committee.

First, bi-partisanship in approaching national security issues was enhanced by a decision that all staff positions would be considered "non-partisan", except for the positions of Staff Director and Minority Staff Director. The Committee staff serves all members without regard to party affiliation and the Committee itself has avoided party division in voting patterns.

Second, a major effort was begun to strengthen procedures for the safeguarding of classified information and to prevent unauthorized leaks and disclosure of such information. The Committee sought and received the support of the Majority and Minority leaders of the Senate for a policing of policy under which any member of the Committee found to be responsible for leaks of classified information would be removed from the Committee and any staff members who engaged in such conduct would be terminated. In addition, Committee members agreed not to remove classified documents from the Committee space and to leave all notes on classified Committee briefings in the Committee space to be kept for further study within this secured space.

Third, the Committee established a systematic quarterly review of all covert action programs. Staff was assigned specialized responsibilities to track the most active programs on a continuous basis. The regular quarterly reviews by the Committee and the preparation made for these briefings by the National Security Council and the Intelligence Community assures that these programs will be closely examined and periodically reviewed by both the executive and legislative branches of government.

Fourth, for the first time the committee established its own internal audit team with the ability to conduct independent audits of intelligence programs. The audit team, which is small and tightly organized to prevent the compromise of sensitive programs, is proving to be highly effective in strengthening the oversight capability of the committee. It has received excellent cooperation from the Executive Branch and has built a good reputation for its professional approach.

As a result of the Iran-Contra affair, the Committee conducted a thorough review of the laws and procedures for covert action. The most significant of these actions was the Committee's voting out of S. 1721, the Oversight Act of 1988, which the Senate then adopted by a vote of 71–19. A section outlining the important issues involved in this matter can be found in this report.

Some important requirements for additional reporting by the Director of Central Intelligence (DCI) and his appointed Inspector General were included in the FY 1989 Intelligence Authorization Act as a result of the hearings conducted on legislation to appoint an independent Inspector General of the CIA.

During the ratification process of the Treaty on the Elimination of Intermediate-Range and Shorter-Range Missiles (the INF Treaty), consistent with the jurisdiction established by Senate Resolution 400 and in response to a request from the Senate leadership, the Committee conducted a lengthy review of the ability of the United States to monitor and verify Soviet compliance. The INF section of this report explains in detail the numerous hearings, and reviews; and the interaction with the Administration that resulted in some last-minute negotiations on clarification of certain provisions.

Especially important was the direct cooperation of the leadership of the Committees on Intelligence and Armed Services with those in the executive branch in framing and drafting the negotiating documents for the final agreement with the Soviets in regard to on-site inspection provisions. The negotiating statement was actually

drafted through personal meetings which included Senators on the Committee and responsible executive branch officials. The success of this effort allowed the nation to speak with a single united voice in these negotiations and demonstrated the tangible benefits of mutual and bi-partisan cooperation between the two branches of government in matters of this kind.

Throughout 1987 and early 1988 the Committee conducted bi-weekly oversight hearings on the CIA's management of the assistance provided to the Nicaraguan Resistance (Contras) under Public Law 99-591. When the Agency for International Development took over the humanitarian assistance program for the Contras in March 1988, SSCI staff continued to monitor other Executive branch activities under SSCI jurisdiction that supported the USAID mission.

The Committee conducted a comprehensive investigation into allegations of improper activities in the FBI investigation of the Committee in Solidarity with the People of El Salvador (CISPES). In 1989 the Committee issued a report concluding that there was a serious failure in FBI management in allowing governmental scrutiny of domestic political activities. As a result of the report, the FBI which accepted its conclusions, has made a series of internal reforms to prevent a recurrence of these kinds of problems and has taken remedial action to clear the records of those citizens who were improperly placed under surveillance.

Many other developments continued to occupy the Committee's attention during the 100th Congress. Hearings were conducted on the nominations of both Robert H. Gates and William H. Webster to become Director of Central Intelligence. (The Gates nomination was subsequently withdrawn; the Senate was ultimately confirmed Webster as DCI). Five meetings were held with administration officials to review the extent to which the intelligence community is able to assist the rule of law in countering terrorists. Other events that are covered separately in this report are the Moscow Embassy Marine Security Guard scandal, alleged Soviet penetration of the unfinished new embassy building in Moscow, and many serious espionage cases. A counterintelligence review was initiated and will be a primary issue in the 101st Congress.

A major responsibility of the Committee is the annual authorization of appropriations to fund the U.S. national intelligence programs. A section in this report covers the process of these authorizations for Fiscal Years 1988 and 1989. One of the most important budgetary achievements came as a result of the review of the U.S. capability to monitor and verify Soviet compliance with the INF Treaty. A cooperative agreement was reached with the Executive Branch to fund needed improvements in our technical collection means.

In total, the SSCI conducted a total of 206 on-the-record meetings and hearings during the 100th Congress. The INF Treaty alone required 48 such sessions, 108 were held for oversight; 22 business meetings were conducted; and 14 hearings reviewed budget requests of the intelligence community. The Committee believes that the public's confidence in U.S. intelligence activities can be preserved and enhanced through Congressional oversight and has at-

tempted to discharge its constitutional and statutory functions while preserving necessary secrecy.

## II. LEGISLATION

### *S. 1721, Oversight Act of 1988*

When the 100th Congress convened in January, 1987, the Committee was nearing the conclusion of its preliminary inquiry into the Iran-Contra affair (See Page 47, below). It was, however, only the beginning of a long and extensive Committee examination of the need for changes in the existing statutory framework for intelligence oversight.

Following the November 1986 public disclosure of the Iran arms sales, the Committee began a thorough review of how the laws and procedures for covert action might have been violated, disregarded or misinterpreted. Director of Central Intelligence William J. Casey testified initially on those issues on November 21, 1986. After the Attorney General on November 26, 1986, disclosed the diversion of certain Iran arms sales proceeds to the Contras, the Committee initiated a formal preliminary investigation on December 1, 1986. This investigation was completed with the issuing of a public report on January 29, 1987. (Committee Rept. No. 100–7).

The Committee's preliminary inquiry examined in depth the circumstances in which the statutes, Executive Orders, and procedures for covert action approval and oversight were interpreted and applied in the Iran-Contra affair. Witnesses who discussed these issues included the Secretaries of State and Defense, the Attorney General, the President's Chief of Staff, one former National Security Advisor to the President, the Deputy Director of Central Intelligence and his predecessor, the CIA General Counsel and his predecessor, the CIA Deputy Director for Operations, the Chief of the CIA Central American Task Force, the CIA Comptroller General, the CIA Inspector General, the Assistant Secretary of State for Latin American Affairs, the Assistant Secretary of Defense for International Security Affairs, and other Executive branch officials.

It became clear from the Committee's intensive preliminary Iran-Contra inquiry that significant changes were required in the covert action oversight framework. Accordingly, the Committee discussed these issues at its February 1987 hearings on the nomination of Robert Gates to be Director of Central Intelligence. After his nomination was withdrawn, the Committee again raised these issues with Judge William H. Webster at his April 1987 confirmation hearings to be DCI.

As the Iran-Contra Committee began its hearings, the Intelligence Committee developed recommendations for actions that could be taken by the Executive branch under current law. At meetings in June, 1987, the Committee approved a letter to National Security Advisor Frank Carlucci setting forth detailed proposals for improved covert action approval and reporting procedures.

The Committee's letter recommended that covert action approval and reporting procedures ought to incorporate the following points:

> In all cases there shall be a finding by the President prior to the intitiation of any covert action. No finding may retroac-

tively authorize or sanction any covert action not undertaken pursuant to, and subsequent to, a finding specifically approved by the President.

To ensure accountability and to provide unambiguous direction for actions taken within the Executive branch, there will be no "oral" findings unless the President determines that immediate action is required of the United States to deal with an emergency situation affecting vital U.S. interests, and time does not permit the drafting of a written finding. In these circumstances, the "oral" finding shall be immediately reduced to writing and signed by the President. The written finding shall include the President's reasons for first proceeding with an "oral" finding.

Each finding approved by the President shall specify any and all entities within the Executive branch that will fund or otherwise participate in any way in carrying out the activities which are authorized, and shall set forth the nature and extent of such participation. The President shall be responsible for reporting all findings to the Intelligence Committees, regardless of which entity or entities within the Executive branch are designated to participate in the activity in question. At the time such reports are made, the President shall also identify to the Committee any third country and, either by name or descriptive phrase, any private entity or person, which the President anticipates will fund or otherwise participate in any way in carrying out the activities which are authorized and shall set forth the nature and extent of such participation. Any changes in such plans or authorizations shall be reported to the Intelligence Committees prior to implementation.

Where the President determines to withhold prior notice of covert actions from the two Intelligence Committees, such prior notice may be withheld only in accordance with specific procedures. Such procedures shall, at a minimum, require that the President, or his representative, shall, in all cases without exception, notify contemporaneously, and in no event later than within 48 hours, the Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the House, and the Chairmen and Vice Chairmen of the two Intelligence Committees of the existence of the finding, which notification shall include a summary of the actions authorized pursuant thereto and a statement of the reasons for not giving prior notice.

The Committee's ensuing dialogue with the Administration, through National Security Advisor Carlucci, did not result in full agreement on new Executive branch procedures. These extensive consultations did, however, contribute to the substantive provisions of a new National Security Decision Directive on Special Activities (NSDD 286) issued by the President to clarify the rules by which covert actions are reviewed, approved, and reported to Congress.

In the consultations leading to the NSDD, the Committee and the Administration were unable to reach agreement on a requirement that the Intelligence Committees, or a group of congressional leaders, be informed of covert actions within 48 hours of their approval by the President. The NSSD requires a National Security

Council planning group to re-evaluate at least every 10 days a decision to delay Congressional notification of a given finding. While the rationale may be to ensure that the delay will be kept to the absolute minimum length of time, the procedure contemplates that notice may be withheld indefinitely so long as NSC planning group members agree.

Thus, the NSDD appears to conflict with the current oversight statute which, in subsection 501(b) of the National Security Act, requires notification "in a timely fashion" and does not permit such indefinite delay. The difference of opinion between the Executive branch and Members of Congress over the meaning of the term "timely" demonstrated the necessity for legislation to clarify the legislative intent.

These same issues were also considered at great length by the Iran-Contra Committee. The witnesses before that Committee discussed not only the facts of the Iran-Contra affair, but also the way covert action approval and oversight procedures were applied or, in many cases, misapplied. Accordingly, the exhaustive work of the special Iran-Contra Committee served to supplement the work of this Committee.

These deliberations led to the introduction on September 25, 1987, of S. 1721, the Intelligence Oversight Act of 1987, by Senator Cohen for himself and Senators Boren, Inouye, Mitchell, Bentsen, DeConcini, Murkowski, and Rudman. The bill had three principal objectives:

The first is to clarify and emphasize the general responsibilities of the President to work with the Congress, through the House and Senate Intelligence Committees, to ensure that U.S. intelligence activities are conducted in the national interest. Current law does not fully address the obligations of the President. Nor did the existing statute reflect the results of the consultations that had taken place over the last year between the Committee and the Executive branch on measures to implement the lessons learned from the Iran-Contra inquiries.

The second objective was to eliminate unnecessary ambiguities in the law. Experience under the current statutes had indicated significant areas where Congressional intent may be subject to misinterpretation by Executive branch officials, as well as gaps in the law where Congress did not adequately anticipate the need for statutory guidance. Examples included the uncertain meaning of the requirement to report "in a timely fashion," the absence of an explicit provision for written Presidential findings, and the need to specify those responsible for implementing covert actions. The aim was to clarify the intent of Congress with respect to oversight of intelligence activities so as to reduce the possibilities for misunderstanding or evasion. For purposes of clarity, a distinction was made between the detailed provisions for special activities, which are instruments of U.S. foreign policy, and the requirements for other intelligence activities (i.e., foreign intelligence and counterintelligence collection and analysis) that are less controversial.

A third objective was to provide general statutory authority for the President to employ special activities to implement U.S.

foreign policy by covert means. Congress had not previously done so, except to the extent that the CIA was authorized by the National Security Act of 1947 "to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct." Current law requires Presidential approval and reporting to the Intelligence Committees, but this does not provide affirmative statutory authority to employ covert means as a supplement to overt instruments of U.S. foreign policy. Nor does it specify what types of activity are intended to be covered by legal requirements for covert action. This has called into question the legality of some covert actions, such as arms transfers, which are undertaken as alternatives to overt programs which have express statutory authority and limitations.

The Intelligence Committee postponed hearings on S. 1721 until after final approval of the Iran-Contra Committee's Report in November, 1987. Thereafter, the Intelligence Committee immediately began the final phase of its work on oversight legislation. At a public hearing on November 13, 1987, the sponsors of legislation in this area testified on their respective bills. Senator William S. Cohen testified on behalf of S. 1721. Senator Arlen Specter testified on behalf of S. 1818, which contains similar covert action finding and notice requirements.

At a closed hearing on November 20, 1987, DCI William Webster testified on the practical impact of the bills on the intelligence community. At a public hearing on December 11, 1987, the Committee received testimony from the Vice Chairman of the Iran-Contra Committee, Senator Warren Rudman, who cosponsored S. 1721. Assistant Attorney General Charles Cooper testified at that hearing on how the Justice Department's view of constitutional law applied to the bill. Also testifying at that hearing were the authors of similar House legislation, H.R. 1013, Representative Louis Stokes, Chairman of the House Permanent Select Committee on Intelligence, and Representative Matthew F. McHugh, Chairman of the House Intelligence Committee's Subcommittee on Legislation.

On December 16, 1987, the Committee received public testimony from Secretary of Defense Frank Carlucci and from Under Secretary of State Michael Armacost, who expressed the Administration's opposition to S. 1721's requirement to report covert action findings to appropriate Members of Congress within 48 hours. It also heard from former Secretary of Defense Clark Clifford and former Deputy Director of Central Intelligence, John McMahon, who supported this requirement. On December 17, 1987, the Committee received a letter from FBI Director William S. Sessions raising questions about the application of the bill to FBI foreign counterintelligence and international terrorism investigative programs.

At the same time, the Committee solicited the views and reviewed comments of dozens of other individuals, such as former senior U.S. Government officials, experts in intelligence law, and Executive branch representatives. Committee staff met personally with over two dozen experts who provided valuable assistance in helping evaluate and refine the language of S. 1721. The results of that process were made available to all members of the Committee.

Representatives of several organizations submitted written comments on the bill. The American Civil Liberties Union recommended greater restrictions on covert action, while officials of the following organizations recommended fewer such restrictions: The Association of Former Intelligence Officers, the Hale Foundation, the National Intelligence Study Center, and the Security and Intelligence Foundation. Individuals submitting written comments in general support of the bill included former Secretary of State Cyrus Vance, Senator Patrick Leahy, Harry Howe Ransom of Vanderbilt University, Gregory F. Treverton and Laurence H. Tribe of Harvard University, and Loch Johnson of the University of Georgia. Individuals submitting written comments in general opposition included former Senator Barry Goldwater, former DCIs Richard Helms and Stansfield Turner, former Counsel to the President's Intelligence Oversight Board Robert F. Turner, and John Norton Moore of the University of Virginia.

On December 16, 1987, the Select Committee on Intelligence approved the bill by a 13—2 vote and ordered it favorably reported.

S. 1721 came to the floor of the Senate on March 4, 1988. After three days of debate and the adoption of some minor changes, it passed the Senate on March 15th by a vote of 71–19.

A counterpart bill, H.R. 3822, was reported in the House of Representatives, but it was not brought to a vote prior to the end of the session.

Notwithstanding the failure to obtain a vote in the House, the Committee believes that its extensive consideration of this bill, as well as the decisive bipartisan vote achieved in the Senate, were valuable accomplishments in clarifying the Committee's and the Senate's positions with respect to the oversight of intelligence activities.

*S. 1818, National Security Act of 1987*

On October 27, 1987, Senator Arlen Specter introduced S. 1818, an omnibus bill to require the President to report all covert action findings to Congress within 24 hours. It also provided for mandatory penalties for deceiving Congress and established an independent Inspector General for the CIA. This legislation was referred to the SSCI, and the Committee held a hearing on March 1, 1988, on the independent Inspector General provision of the bill.

Testifying in support of the legislation were Comptroller General Charles A. Bowsher, Ms. June Gibbs Brown, Inspector General for the Department of Defense; and Sherman M. Funk, Inspector General for the Department of State.

Director of Central Intelligence William Webster also testified that he had discovered that the CIA's Office of Inspector General needed to be improved in the wake of the Iran-Contra affair. Webster stated that he had consequently taken steps to upgrade the position of Inspector General to the rank and position of Deputy Director, subordinate only to him and to the Deputy Director of Central Intelligence. In addition, DCI Webster indicated that he had expanded the mission and authority of the office. In light of these measures, and for other reasons, he requested that the Committee provide him the opportunity to demonstrate the effectiveness of

these changes and to withhold legislation calling for an independent Inspector General.

In mark-up, the Committee agreed to a modification of the legislation which, in essence, did not include an independent Inspector General for the CIA, but did include a series of reporting requirements by the DCI and his Inpspector General. These reporting requirements were included in the FY89 Intelligence Authorization Act which President Reagan signed into law on September 29, 1988. In the statement accompanying the signing, President Reagan raised concerns that the provision requiring the IG's reporting of recommendations and opposing views conflicted with the constitutional protection afforded the internal deliberations of the Executive branch. However, the concern did not lead to a delay in the signing or to a veto.

## III. FOREIGN INTELLIGENCE

### *A. Arms control monitoring*

During the 100th Congress, the Senate leadership charged the Committee with the responsibility for providing a report on the ability of the United States to monitor and verify compliance by the Soviet Union with the Treaty on the Elimination of Intermediate-Range and Shorter-Range Missiles (the INF Treaty). In preparing its report, the Committee engaged in a truly comprehensive effort, both in terms of the breadth and depth of its coverage. The Committee held 15 closed hearings and 17 on-the-record staff briefings. It formally reviewed over 250 intelligence documents, many of which were several hundred pages long; approximately 3,000 pages of written and oral testimony; and roughly 300 answers to questions-for-the-record. In addition, Committee Members and staff held countless informal briefings and reviewed many more documents and answers to questions. The Committee followed all aspects of the negotiations and evaluated all treaty provisions as they applied to monitoring, counter-intelligence, collection capabilities and strategies, cheating options and incentives, resource allocation, and intelligence implications for the future.

The Committee began a staff review of the Treaty while negotiations were still ongoing. During the latter part of 1987 and the early part of 1988, the Committee held on-the-record staff briefings on all subjects relating to the INF Treaty. The briefings were coordinated by the CIA's Arms Control Intelligence Staff, and included representatives from all major US intelligence agencies, including the Central Intelligence Agency, Defense Intelligence Agency, National Security Agency, and State Department's Bureau of Intelligence and Research. The Committee also requested classified information on select subjects to supplement the briefings. In addition, the Committee met with representatives from the Defense Department, the State Department, and the U.S. Arms Control and Disarmament Agency (ACDA) on the status of the negotiations. These efforts prepared the Committee to begin its formal hearings once the INF Treaty was sent to the Congress for its advice and consent.

Formal hearings on the INF Treaty began at the end of February, 1988 and continued throughout the spring. The Committee

took testimony from the policymaking and intelligence communities:

The INF negotiators' testimony emphasized those provisions which governed on-site or cooperative monitoring obligations and monitoring by traditional intelligence sources.

The Arms Control and Disarmament Agency testified about the arms control implications of the Treaty, particularly the monitoring requirements necessary to provide adequate verification.

The Defense Department discussed monitoring requirements necessary to reduce military risk, levels of cheating considered militarily significant, and the military requirements for INF-range missiles with exotic payloads. Witnesses from all branches of the intelligence community testified about our ability to monitor Soviet compliance; on current and planned collection and analytical capabilities, including shortfalls and proposed solutions to monitor INF and future arms control agreements; and on Soviet incentives and disincentives to cheat now and in the future.

Counterintelligence experts testified about the hostile intelligence threat posed by Soviet inspectors in the US and to US inspectors in the Soviet Union.

Outside experts testified about the future arms control environment and implications for monitoring and intelligence collection.

The Committee followed up the hearings by submitting several hundred questions for the record and by continuing the process of informal and formal staff briefings to clarify answers. Based on analysis of the information provided, the Committee prepared a 350-page classified report on the INF Treaty. Not only did the report cover in detail the monitoring and verification requirements of the INF Treaty, but judgments on the U.S. ability to monitor Soviet compliance with future nuclear missile treaties. The analysis included Soviet incentives and disincentives to comply, new intelligence needs, and counterintelligence and security implications of Soviet inspections and portal monitoring. In addition to the classified main report, the committee drafted an executive summary and provided the Senate Foreign Relations Committee with unclassified "key findings" for its consideration prior to reporting the treaty.

The Committee's successful effort in the arms control arena was highlighted by the fact that in several crucial areas—obtaining an administration commitment to fund additional intelligence collection capability to satisfactorily monitor the INF Treaty in conjunction with potential future arms control agreements; clarifying Treaty language to unambiguously identify the types of missile systems banned and not banned by the Treaty; and clarifying U.S. inspection rights at the Votkinsk missile production factory to insure that US inspectors could inspect SS–25 missiles leaving the factory—the Committee played a primary and positive role in satisfactorily resolving the issues in time for the President to sign the Treaty at the Moscow Summit and for the Senate to subsequently ratify the Treaty.

*B. Central America*

Throughout the 100th Congress the focus of Intelligence Committee attention in Central America was Nicaragua. This situation occurred because in its last days the 99th Congress enacted a Continuing Resolution for FY 1987 which contained a $100 million transfer of unobligated Department of Defense funds to provide assistance for the Nicaraguan resistance (Contras). This bill became law (PL 99–591) when it was signed by the President on October 30, 1986. Shortly thereafter the Central Intelligence Agency was given the task of organizing the expenditure of $97 million of the total. (The remaining $3 million was given to the Department of State for strengthening human rights observance among the members of the resistance.)

By the opening of the 100th Congress in January 1987, the CIA's efforts with the resistance were well underway, and the Senate Intelligence Committee had instituted a pattern of biweekly oversight hearings on the Nicaragua program. At these hearings representatives of the CIA (for program operation) and State Department (for policy development and application) reported to the SSCI members and staff and were questioned about developments in the contra aid program and how it was meeting its goals. These hearings continued throughout calendar year 1987 and into 1988.

The program of CIA-administered assistance to the Nicaraguan resistance ended on February 29, 1988. After this date, and continuing throughout 1988 and into 1989, humanitarian (non-lethal) assistance was provided to the members of the resistance through the auspices of the US Agency for International Development (USAID). The SSCI did not play a direct role in oversight of this program. Because the CIA had a role in supplying intelligence used by USAID in administering the program, however, SSCI staff participated in the sessions between USAID and its oversight bodies in the Congress, such as the House Permanent Select Committee on Intelligence, the Senate Foreign Relations Committee and the Appropriations Committees of both houses of Congress. As the 100th Congress ended in October 1988 the Nicaraguan resistance members were camped just inside the border of Honduras, USAID was feeding combatants, families, and supporters, and the SSCI was monitoring CIA activities that supported the USAID mission.

As part of continuing oversight for this program and others, both Members and Committee staff traveled to Nicaragua and to other countries in the region. As is required by the Committee's rules, substantive reports were submitted to the SSCI following each of these trips.

*Caribbean*

Most of the Committee's work in conducting oversight of intelligence activities in the Caribbean was done behind closed doors. As with the Nicaragua program, however, Members and staff of the SSCI visited various countries within the region and reported firsthand on activities there. These trips and the resulting written reports have proven invaluable in allowing the SSCI to assess problems, requirements and accomplishments in the Carribean region.

## IV. COUNTERINTELLIGENCE AND COUNTERTERRORISM

### *A. The security of U.S. Embassies*

During the 99th Congress the Intelligence Committee had closely followed the emerging technical security problems regarding the U.S. Embassy buildings in Moscow. The Committee's 1986 report on U.S. counterintelligence and security programs discussed "the bugging of typewriters at our Moscow embassy and other Soviet technical surveillance operations." The public version of this report emphasized the importance of the hostile intelligence threat to U.S. embassies and supported both the Inman Panel recommendations on embassy security and the nascent effort to protect the word processing equipment used in those embassies.

Early in the 100th Congress, the Marine Security Guard scandal and public disclosure of Soviet technical penetration of the unfinished new embassy building in Moscow led the Committee to hold three closed hearings on the specific issue of embassy security. In a subsequent public report on this subject, the Committee outlined security problems at both the existing Moscow embassy and the new building, as well as "the basic flaws in State Department security organization and practices" and the funding of State Department technical security programs. That report included the following recommendations:

Demolish the new Moscow chancery building;

Consolidate the security, embassy construction, and foreign mission programs of the State Department;

Fence diplomatic security funding;

Establish a Senate task force for the long term oversight of embassy security;

Establish an outside advisory panel to provide an objective analysis of future embassy construction planning;

Revise procedures governing the Marine Security Guard program;

Replace Foreign Service Nationals working at U.S. missions in high-risk countries; and

Reform personnel policies to enhance security.

The Committee has continued to follow these issues since making that report. As various Executive branch groups have studied the new embassy problem, the Committee has continued to suggest that destruction of the unfinished building and construction of a new embassy with better design and construction security would be the simplest solution. The Committee has also continued to press for better funding of embassy security, for greater attention to technical security concerns when building new embassies (especially in high-threat areas), for major reductions in the number and responsibilities of non-American employees at U.S. embassies in high-risk countries, and for improvements in State Department organization to handle the embassy security challenge. Committee Members and/or staff have visited the U.S. Embassy in Moscow once or twice a year to check on progress in security efforts, and Committee staff have visited several embassies in Eastern Europe and elsewhere to survey security problems and responses in those countries.

In mid-1988, the Committee began a systematic review of the conterintelligence and security issues raised in its 1986 and 1987 reports. This review, which is intended to lead to a public report later this year, will examine in some detail the embassy security issues that the Committee has followed since the mid-1980s.

*B. Espionage*

The serious espionage cases that came to light in 1987 and 1988, added to the celebrated cases of 1985 (Walker/Whitworth, Pelton, Pollard) make the 1980's the "Decade of the Spy." The Committee's concerns about the threat to the nation's security from espionage, expressed in previous annual reports and in a 1986 report on the counterintelligence challenge, remain unassuaged.

During 1987 and 1988 at least 17 Americans were implicated in espionage or were investigated on counterintelligence grounds. Most were active duty military or Department of Defense civilian employees and most volunteered their services to foreign governments, typically the Soviet Union or its Warsaw Pact allies. The motivation in the majority of cases was greed. In a few cases revenge or ideology also palyed a role.

A brief summary of the cases involving Americans follows:

(1) Michael Hahn Allen was a Navy civilian reproduction/distribution clerk for the U.S. Naval Telecommunications Center in the Philippines who admitted he removed classified material from his work place in order to sell them.

(2) Clyde Lee Conrad is a retired Army Sergeant First Class who was arrested by West German authorities in August 1988 on suspicion of espionage.

(3) John Allen Davies is a retired Air Force E–5 accused of attempting to pass classified information to the Soviets.

(4) Thomas Joseph Dolce, a former civilian employee of the Army Material Systems Analysis Activity at Aberdeen Proving Ground, Maryland, is charged with providing classified information to the South Africans.

(5) Wilfredo M. Garcia was court-martialed for providing classified material from Mare Island Naval Shipyard for eventual sale to the Soviets.

(6) James William Hall, II, an Army Warrant Officer, has been convicted of espionage activities committed overseas and in the United States.

(7) Ronald D. Parker admitted attempting to provide the Soviets with sensitive information and has resigned his position with the Oklahoma City Air Logistics Center, Tinker Air Force Base. The U.S. Attorney and local authorities declined to prosecute due to lack of evidence.

(8) Daniel W. Richardson, an Army Sergeant, attempted to pass classified information to the Soviets.

(9) Charles L. Rothrock, an Air Force E–5, failed to report contacts with Soviet nationals and engaged in unauthorized travel to the Soviet Union.

(10) Alfonso T. Ruiz, a Navy enlisted man stationed at the Naval Telecommunications Center in the Philippines admitted photocopying and taking home classified information.

(11) Kelly J. Schmidt and Edmund W. Tuck, two Army enlisted men, and Craig Sutherland, an unemployed civilian, were engaged in selling illegal drugs. Schmidt, a classified document courier, left documents unattended in a vehicle. Sutherland stole the documents and was caught when he attempted to sell them. Schmidt and Tuck were charged with failure to report the loss of the documents and Schmidt was also charged with dereliction of duty for leaving the documents unattended.

(12) Glen Michael Souther, a former Navy enlisted man and an enlistee in the Naval Reserves, defected to the Soviet Union shortly after agreeing to submit to a polygraph in the course of an FBI investigation of allegations concerning Souther's espionage activities.

(13) Henry Otto Spade, a former Navy radioman, was convicted of unauthorized possession of classified material after an ex-girlfriend reported that he had boasted about stealing the material.

(14) Russell D. Tinnell, an Air Force deserter, admitted that he had attempted to defect to the Soviet Union with the intention of providing the Soviets with classified information.

(15) Alan Roger Volin, a Navy Lieutenant, was court-martialed for unauthorized possession of classified material.

In addition to the Americans cited above, there were at least three cases involving compromises or attempts to compromise sensitive information by foreign nationals.

(1) Belgian Air Force Colonel Guy Binet admitted in September 1988 that he had been a Soviet agent. Binet may have compromised classified information about American weapons systems and other sensitive matters.

(2) Four Japanese nationals, Hiromi Date, Hiroshi Osumi, Masateru Tachibana and Sadao Goto, have been convicted by Japanese authorities of stealing U.S. property. The four were engaged in selling or attempting to sell sensitive U.S. information to the Soviets and the Chinese.

(3) Svetlana Tumanova was convicted by the West Germans for committing espionage. Tumanova, a Soviet emigre, attempted to recruit a U.S. Army soldier and his wife, an Army civilian employee.

All of these cases make it clear that espionage continues to constitute a severe threat to U.S. national security. Arrests were made in several cases before information was passed to a foreign government, but in too many cases, severe damage was done before the traitors were caught.

*C. CISPES*

In 1988, the Committee began an extensive oversight inquiry into allegations of improper activities in the FBI investigation of a domestic political group opposed to U.S. policy in Central America, the Committee in Solidarity with the People of El Salvador (CISPES). Part of this inquiry focused on the FBI's relationship with Salvadoran expatriate, Frank Varelli, who was a principal source in that investigation. Although the Intelligence and Judiciary Committees have concurrent jurisdiction over FBI intelligence activities, pursuant to S. Res. 400 (94th Congress), the Intelligence Committee took the lead in this case because the FBI conducted its international terrorism investigation of CISPES pursuant to classi-

fied Attorney General's Guidelines for FBI Foreign Counterintelligence Investigations.

The Committee's independent investigation served to test and corroborate an FBI Inspection Division inquiry that was initiated by FBI Director William S. Sessions. The Committee and the FBI Director reached the same basic conclusions: the FBI international terrorism investigation of CISPES was initiated on the basis of allegations that should not have been considered credible; it was broadened beyond the scope justified even by those allegations; and it continued after the available information had clearly fallen below the standards required by the applicable guidelines.

The Committee also concurred in the Director's assessment that the FBI's conduct in the CISPES investigation and in its relationship with Varelli was an aberration among the thousands of counterintelligence and counterterrorism investigations the FBI conducts annually. This case contrasted sharply with the overall record of respect for and protection of First Amendment rights that characterized the FBI's counterintelligence and counterterrorism programs under Director William H. Webster. No similar case came to the Committee's attention, and the Committee's oversight of other FBI activities has found a definite pattern of adherence to established safeguards for constitutional rights.

The Committee subsequently issued (during the 101st Congress) a public report on the results of its investigation of the FBI and CISPES. The report concluded that the CISPES case was a serious failure in FBI management, resulting in the investigation of domestic political actitivies that should not have come under governmental scrutiny. The most critical management breakdown involved the handling of Varelli as an FBI source. The Committee also found that the vast majority of groups mentioned in the CISPES documents that have been released under the Freedom of Information Act were not the subject of any other type of inquiry as a result of the CISPES investigation. The Committee was satisfied that the Director's disciplinary actions and remedial measures were solidly based and that he identified most of the systemic problems in FBI management and supervision that contributed to the mistakes made in this case.

Consistent with the Committee's rules, the Members of the Committee voted to approve the initiation of a formal investigation of the CISPES and Varelli matters on February 23, 1988. The investigation sought to pursue issues raised by documents released by the FBI under the Freedom of Information Act, as well as problems in the CISPES investigation indicated by Varelli's public statements in 1987. FBI Director Sessions had met with the Committee in closed session on February 2, 1988, to discuss the need for an internal FBI inquiry, and shortly thereafter the Committee, in consultation with the Judiciary Committee, posed detailed questions and requested pertinent FBI documents.

The Committee's investigation included a review of more than 10,000 pages of FBI Headquarters and field office files and the full report of the FBI Inspection Division. The Committee was also given access to the Inspection Division's interviews with senior FBI Headquarters officials and former officials, including Director Webster. Access to the most sensitive aspects of the Inspection Division

report and the interview was tightly limited within the Committee on a strict need-to-know basis.

In addition to examination of documents and staff interviews, the Committee received testimony from FBI and Justice Department officials at three hearings. Members of the Judiciary Committee were invited to these hearings because of their concurrent jurisdiction. At a public hearing on February 23, 1988, the Committee heard testimony from FBI Executive Assistant Director Oliver B. Revell, Assistant Director William Gavin of the FBI Inspection Division, and Steven Pomerantz, chief of the Counterterrorism Section in the FBI Criminal Investigative Division. Gavin explained the Inspection Division's mandate from the Director to conduct a comprehensive and independent internal inquiry. Revell summarized the results of an initial review of the record by the Counterterrorism Section.

On April 13, 1988, the Committee received testimony from Mary Lawton, the Attorney General's Counsel for Intelligence Policy, and Allan Kornblum, Deputy Counsel, on the role of the Justice Department's Office of Intelligence Policy and Review in the CISPES investigation. Shortly after that Office had found the justification insufficient in June, 1985, the FBI had closed the case.

Director Sessions testified at a public hearing of the Committee on September 14, 1988. He was accompanied by Delbert C. Toohey, Deputy Assistant Director for the Inspection Division, who directed the internal FBI investigation. The Director reported his principal findings and recommendations, based upon the Inspection Division report, as well as his personal conclusions and actions to impose disciplinary sanctions on six FBI personnel and to institute a series of policy changes and remedial measures. The Director's actions responded directly to virtually every issue identified by the Inspection Division and in the Committee's investigation.

*D. Marine security guard cases*

As part of its broader inquiry into security at U.S. diplomatic establishments, the Committee made an extensive review of the policies and practices governing the selection, training, assignment, and operational responsibilities of Marine Security Guards (MSGs), particularly those assigned to posts where the likelihood of hostile intelligence approaches was high. Following the disclosure of a series of possible espionage cases involving MSGs in early 1987, a hearing and several staff briefings were held where these matters were explored at length. The Committee followed up these inquiries during a series of staff visits to East European capitals in the fall of 1987, where MSG detachments were surveyed in detail.

The Marine Corps itself conducted a comprehensive review of policy and procedure in this area during 1987, and, as a consequence, instituted considerable changes responding to the Committee's concerns. These were the subject of additional staff briefings in 1988, and were reviewed in the field during staff visits in the fall of 1988. Substantial improvements in the MSG program were noted even within a year's time.

*E. Terrorism task force*

Since the Committee does not have subcommittees, the Chairman and Vice Chairman of the SSCI authorized the formation of "task forces" to be headed by Members and to serve as an informal means of allowing Members to focus their interests on intelligence matters. During the 100th Congress, the Counterterrorism Task Force held five meetings with administration officials. The purpose of the meetings were to review the extent to which U.S. intelligence is able to assist the rule of law in countering terrorists; i.e., with their identification, location, apprehension and/or prosecution. The task force focused on specific past and current terrorist incidents several of which have been successfully prosecuted and several of which have no litigation pending. Officials testifying were from the Central Intelligence Agency, the Federal Bureau of Investigation and the Department of Justice.

On May 29, 1987, the Counterterrorism Task Force reviewed intelligence agency capabilities in locating and identifying known terrorists around the world. Questions focused on intelligence support to the provisions of the Omnibus Diplomatic Security and Anti-terrorism Act of 1986 concerning extra territorial criminal jurisdiction over terrorist acts abroad against U.S. nationals.

On June 25, 1987, Department of Justice witnesses addressed the U.S. ability to deal with terrorism under the provisions of extra-territoriality of United States law. In addition, the Task Force addressed issues of intelligence support in the identification, apprehension and prosecution of specific terrorists.

On June 30, 1987, the FBI outlined its role into combating international terrorists abroad and the impact upon the FBI of the new law extending U.S. jurisdiction to all acts of terrorism committed against Americans abroad. The task force also reviewed current action under the law and future requirements for the FBI.

On March 25 and March 30, 1988, the Task Force reviewed a number of cases of Middle East terrorism commencing in 1972 to determine the quality of intelligence information available and issues associated with its applicability in potential prosecutions

*F. Soviet task force*

In light of the important changes underway in the Soviet Union and their potential implications for U.S. national security policies, a task force was dedicated to reviewing the Intelligence Community's analysis of recent trends and events in the Soviet Union. It had been created at the end of the 99th Congress in order to anticipate the needs of the next Congress for projections of Soviet strategic behavior through the 1990's. It met 19 times, almost monthly, during the 100th Congress to consider alternative assessments within the Intelligence Community of various aspects of the Soviet Union's domestic economic difficulties; plans for political, military and economic reform; social, cultural, demographic, and ecological problems, especially in the republics populated mainly by minority nationalities; diplomatic and foreign policy initiatives toward Europe, Asia, and the Americas; the commercial, financial, and technological innovations in Soviet foreign economic policies; and General Secretary Gorbachev's successive arms reduction initia-

tives at the Summit in Reykjavik, at the Intermediate Nuclear Force talks, and at the United Nations.

## V. OVERSIGHT ACTIVITIES

### *A. Covert action*

The Committee has no more important responsibility than the oversight of Covert Action programs. Since the formation of the Committee in 1976, no area has produced more tension between the executive and legislative branches of Government than the planning and implementation of these programs.

Recognizing this fact, the Committee moved swiftly in the early days of the 100th Congress, to revamp the oversight procedures of Covert Action programs. New rules were instituted for the handling of classified information, a Covert Action audit staff was designated, and the Committee began reviewing all Covert Action programs on a quarterly basis, rather than semi-annually as had been the case recently or even annually the first few years of the Committee's existence.

As a result of the Iran-Contra affair, the Committee pushed hard for changes in the reporting procedures on Presidential Findings. The Committee was successful in gaining Senate passage of S. 1721, a bill to require the President, should he decide to withhold prior notice from the two Intelligence committees, to notify the Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the House within 48 hours of a Presidential Finding. For a complete analysis of this legislation see page 4 of this report.

While the House failed to act on the bill, this Committee was successful in negotiating with the administration an executive order that contained many of the provisions of S. 1721.

Although it is not possible in a public report to discuss details of Covert Action oversight, it is important to point out that this area continues to receive the closest possible scrutiny from the policy objectives that must underlie all Covert Action proposals to the planning and execution of the programs themselves by Committee Members.

### *B. The SSCI Audit and Investigations Staff*

In order to augment Congressional oversight capabilities, the Committee established an Audit and Investigations Staff in January 1988. This initiative was undertaken to strengthen the Committee's ability to conduct detailed and independent audits and inspections of highly classified intelligence activities. It was also a carefully crafted response to Congressional concerns regarding the ability of the intelligence community to adequately audit its own programs. Through unique security and access arrangements between the Committee and the Director of Central Intelligence, the Audit Staff conducted several thorough, independent, and aggressive audits of intelligence programs. As a result, a number of financial, managerial, and administrative reforms recommended by the Audit Staff were implemented.

The Audit Staff is composed of a Certified Public Accountant, an experienced government auditor/investigator, and a research assistant. It works closely with the Offices of Inspector General at

the intelligence agencies to protect highly sensitive information while conducting comprehensive, objective reviews. Each project requires extensive program briefings, analysis of financial and monetary data, review of relevant management policies and procedures, and field work. The Audit Staff develops a semi-annual audit work plan and receives tasking from the Committee on a periodic basis. Despite the often unusual case-load, the Audit Staff follows generally accepted audit and accounting standards.

During the past year, the Audit Staff has conducted reviews of covert action programs; surveys of the audit coverage in various intelligence agencies; reviews of compliance to applicable regulations; and financial management and internal control audits of special access projects. Audits have been conducted at the Central Intelligence Agency, the National Security Agency, and the Department of Defense. Several projects have required field work involving travel to foreign countries.

The Audit Staff has proven to be an effective adjunct to independent and thorough Congressional oversight. It has expanded the breadth and quality of program reviews and in some cases it has provided unprecedented access and insight into areas previously inaccessible to Congressional inquiry.

*C. The Iran-Contra preliminary inquiry*

News reports concerning the sales of arms to Iran began to appear on November 3, 1986. These reports prompted questions to the President during several public appearances, which, in turn, raised additional questions, particularly in terms of the failure of the Committee to have been advised of such sales. On November 23, Director fo Central Intelligence William Casey appeared before the Committee in closed session and provided a general summary of the events involving the arms sales.

On November 25, 1986, the Attorney General publicly confirmed that the United States had covertly sold arms to Iran, and disclosed for the first time that some of the proceeds of such sales had been sent to the Nicaraguan resistance at a time when U.S. assistance to them was prohibited by law. On December 1, 1986, the Committee announced a formal investigation.

Over the next month, thirty-six witnesses appeared before the Committee in closed session, and thousands of pages of documents were provided to, and reviewed by, the Committee. A number of the key witnesses who appeared refused to testify, citing their constitutional rights—among them, Admiral John Poindexter, Lieutenant Colonel Oliver North, and Major General Richard Secord. Other witnesses were out of the country and beyond the reach of a subpoena. DCI Casey also fell ill during this period, and was not able to return to the Committee for additional testimony.

Notwithstanding these gaps in its investigation, the Committee was able to piece together the basic outline of the Iran-Contra affair, which was recounted in a 57-page report to the Senate entitled "Preliminary Inquiry into the Sale of Arms to Iran and Possible Diversion of Funds to the Nicaraguan Resistance." The report was published on Januay 29, 1987, a few weeks after the 100th Congress was convened, and served as the "building block" for the extensive investigations subsequently carried out by the joint Iran-

Contra investigating committees created at the beginning of the 100th Congress. Four members of the Committee, including the Chairman and Vice Chairman, were also members of the investigation, the Committee continued to provide advice and support, particularly insofar as the involvement of intelligence agencies and personnel were concerned.

*D. Security Initiatives*

A thorough internal review of Committee Security procedures and practices was conducted by the incoming Chairman and Vice Chairman in 1987.

The Chairman and Vice Chairman immediately initiated a policy that any Member or staff person found to be engaged in any unauthorized disclosure of classified information or internal "Committee Sensitive" material not officially released by the Committee would be removed or terminated from the Committee.

Changes were also initiated requiring Members to read all classified material within the Committee's working spaces and store all notes within the Committee vault in tamper evident pouches. All notes taken by Members, staff or witnesses were to be given to SSCI security called personnel and transferred back to the originator through the existing courier system.

All security responsibilitites were consolidated in the position of the Security Director who would report directly to the Staff Director. An additional security officer was hired resulting in three (3) full time security staff.

The introduction of an electronic office environment created new security challenges for the Committee. One of the first recommendations made by security called for the installation of powerline filters and conditioners, was quickly implemented. Once completion of the installation was accomplished, technical teams were brought in to certify the system. The computer is a C–2 certified system, offering complete audit trails on all transactions for maximum security effectiveness. Periodic technical inspections are routinely conducted to insure the integrity of the Committee's working and conference facilities.

The Senate Office of Security was established by Senate Resolution 243 (100th Congress, 1st Session). The Senate Select Committee on Intelligence recommended its creation in its 1986 report: "Meeting the Espionage Challenge: A review of United States Counterintelligence and Security Programs". Included in this 1986 report was a model security manual now the basis for the Senate manual implemented in January 1989.

Senate Security and SSCI security closely cooperated in a variety of initiatives. Senate security personnel were invited to participate in the SSCI security education awareness programs. These briefings on the hostile intelligence threat and communications security have been extended to Senate staff with appropriate security clearances. A technical evaluation of the Senate led to the development of new initiatives and plans which enhanced the ability of the Senate to detect technical anomalies. A by-product of this study was the reorganization proposal of the current technical security programs found in the Senate Appropriations Committee Markup of H.R. 4587, the Legislative Branch Appropriations for Fiscal Year

1989, which passed the full Senate. However, this proposal was dropped in the Senate-House conference. Another initiative was the installation of the Secure Telephone Unit 3 (STU III) into the Senate. Senate Telecommunications, the Office of Senate Security and the SSCI security continue to work closely on this project.

A special facility was constructed to accomplish an orderly transmittal of the extensive classified material holdings of the Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition. This facility was duly certified and approved for storage of sensitive compartmented information under the direction of SSCI security. Work began on this project nearly one year prior to the abolition of the Senate Iran-Contra Committee in anticipation that all classified information would be placed under the custodial control of the SSCI. Biometric control devices are presently being installed to control and monitor access for these facilities. SSCI security continue to work closely with the Independent Counsel's office concerning access to classified material from the Senate's Intra-Contra investigation. SSCI security averaged 2.5 trips a month to the Senate Iran-Contra vault to assist various authorized inquiries.

The creation of the Committee audit staff provided security with requirements to develop new document control procedures for the audit team's work and supervise the construction of the audit team's new office spaces. Growth in the overall staff and mission of the SSCI also led to the expansion of the SSCI staff working area. This was planned and conducted with a joint working group comprised of community specialists. This expansion also had the spin-off benefits of upgrading the physical security and alarm configurations of both SSCI staff and conference facilities.

## VI. BUDGET AUTHORIZATION PROCESS

One of the major responsibilities of the Committee is the annual authorization of appropriations in support of national intelligence programs. Each year the Committee conducts a detailed and extensive evaluation of the budget proposals for intelligence activities included in the National Foreign Intelligence Program (NFIP) budget submitted by the Director of Central Intelligence. The NFIP incorporates the budgets of those intelligence agencies and activities designed to serve the national foreign intelligence and counterintelligence needs of the policymaking officials of the U.S. government. The Committee's recommendations with respect to the NFIP are incorporated in the annual Intelligence Authorization Bill. During the 100th Congress, the Committee took action on the Fiscal Year 1988 and Fiscal Year 1989 intelligence budgets.

In addition, the Committee reviews those intelligence activities funded in the Tactical Intelligence and Related Activities (TIARA) portion of the Department of Defense budget. TIARA programs are designed to meet the needs of military commanders in both peace and war. The Committee's recommendations on TIARA are submitted to the Armed Services Committee for its consideration in the annual Department of Defense Authorization Bill.

During the 100th Congress, the Committee's annual budget review consisted of a series of hearings with the Director and

Deputy Director of Central Intelligence, the Directors of the National Security Agency and Defense Intelligence Agency, and other senior officials from the Department of Defense, military services, the Department of State, and the Federal Bureau of Investigation.

In addition to formal hearings, the annual budget process involved:

Review of 17 volumes of budget justification material totaling more than 3,000 pages of detail;

Review of written responses to several hundred questions for the record;

Special analyses and studies, including those prepared by the Committee's audit staff; and

An extensive number of briefings to Committee staff by a broad range of intelligence community budget and program officials.

Finally, where appropriate, the Committee incorporates the work arising from its other responsibilities into the annual budget authorization. Of particular note in this regard during the 100th Congress was the extensive review of the ability of U.S. intelligence activities to monitor and verify compliance by the Soviet Union with the Treaty on the Elimination of Intermediate-Range and Shorter-Range Missiles (the INF Treaty). A description of the Committee's work relative to the INF Treaty is discussed elsewhere in this report.

*Budgetary recommendations*

The specific details of the Committee's budgetary recommendations cannot be made public because of the classified nature of intelligence activities. However, in accordance with Senate Resolution 400, the Committee prepares a classified report each year which describes in detail the full scope and intent of its recommendations, as well as the specific amounts authorized for the various U.S. intelligence activities. This report is made available to all Members of the Senate as well as to the Senate Armed Services Committee, the Senate and House Appropriations Committees, the House Permanent Select Committee on Intelligence, the President, Director of Central Intelligence, and the Secretary of Defense.

In general, the Committee's recommendations for the Fiscal Years 1988 and 1989 Intelligence Authorization included actions to:

Strengthen U.S. intelligence capabilities to monitor the INF Treaty as well as a potential START agreement. This was a cooperative effort with the Executive Branch, arising from the Committee's review of the INF Treaty, to obtain needed funding for improvements in our technical collection capabilities.

Strengthen the Intelligence Community's counterintelligence capabilities to deal with a growing foreign intelligence threat;

Focus the Intelligence Community's attention on the challenges that lie ahead and ensure adequate investment for the future; and

Achieve savings wherever possible by eliminating activities found to be unnecessary.

Starting in the late 1970s and continuing throughout the 1980s, the Congress and the Executive Branch have on a bipartisan basis assigned intelligence programs a high priority in the allocation of

national security resources. This has led to an impressive array of new intelligence capabilities now coming on line.

The Committee continues to believe that ensuring a fully capable intelligence system for peace, crisis, and war should remain among the nation's highest national security priorities. Additional investment will be required in the future to keep pace with intelligence targets that are becoming increasingly more difficult and challenging. For example, the Soviet Union and others are taking advantage of their own intelligence successes, as well as leaks of classified intelligence information, to devise countermeasures to U.S. collection. Moreover, existing capabilities are not sufficient to meet a number of new intelligence requirements such as those associated with the international drug trade and terrorism. Finally, as noted earlier, the prospect of a START agreement will pose extremely challenging monitoring tasks on the intelligence community, which will come under close scrutiny by the SSCI at such time as a START agreement is submitted to the Senate for ratification.

## VII. CONFIRMATIONS

One of the Committee's most important responsibilities in the 100th Congress was to consider the nominations of Robert M. Gates and William H. Webster to be Director of Central Intelligence. The hearings on these nominations took place during February and April–May, 1987, while the investigations by the Iran-Contra Committees were underway. In those confirmation hearings this Committee addressed many of the implications of the Iran-Contra affair for the office of the DCI, for the qualifications of the particular nominees, and for the duties of the DCI and the Executive Branch under the Intelligence Oversight Act of 1980. The Committee also examined the overall backgrounds and experience of the nominees and their views of the DCI's role and responsibilities as head of the CIA and manager of the Intelligence Community.

### *A. Nomination of Robert H. Gates*

Hearings on the nomination of Gates were conducted on February 17–18, 1987. Subsequently, at Gates' request, the President withdrew the nomination and Gates remained as Deputy Director of Central Intelligence. Gates was questioned at length about his personal role in the Iran-Contra affair, especially after he learned in the fall of 1986 that a senior intelligence officer suspected a possible diversion of funds from Iran arms sale proceeds to the Nicaraguan Contras. The published Committee hearings on Gates' nomination to be DCI included a declassified transcript of his testimony at a closed hearing of the Committee on December 4, 1986, during the Committee's preliminary inquiry into the Iran-Contra affair (S. Hrg. 100–241, pp. 103–131) and sworn answers to interrogatories that sought a detailed description of Gates' knowledge and participation, if any, in the Iran-Contra matter.

There was considerable discussion during Gates' confirmation hearing of the 10-month delay in notifying the Committee of the Presidential Finding that authorized the covert sale of U.S. arms to Iran. With respect to the statutory requirement in the Intelligence Oversight Act of 1980 to notify the Committee "in a timely fash-

ion," Gates testified, "I believe that the prolonged period of withholding went beyond the bounds of the compromise of 1980. And I believe that it stretched the comity of the arrangements between the branches to the breaking point." Gates made the following commitment on the subject of notification:

> My view is—and my position is and I have discussed that at the White House—I would not recommend to the President withholding prior notification under any except the most extreme circumstances. And then only for a period of several days. It seems to me beyond that point, I believe, I would strongly urge that the Congress be notified.
>
> * * * [T]hat would be my recommendation, but the President could decide otherwise over whatever recommendation that I made. And the Committee needs to know that I would not be disloyal or insubordinate to the President. But I would also add that if I felt the prolongation of the withholding of prior notification reached a point where it threatened a relationship of trust between the Intelligence Community and the Oversight Committees of the Congress, that I would contemplate resignation under those circumstances.

*B. Nomination of William H. Webster*

The hearings on the nomination of Director Webster were held on April 8, 9, 30 and May 1, 1987. In those hearings he gave assurances similar to those offered by Gates. Director Webster pledged that he would recommend to the President against withholding notification of the Committees under any except the most extreme circumstances involving life and death and then only for a few days. He also stated that he would like to see the Committees notified "in less than 48 hours if it's possible to do so in a rational, reasonable way." If he could not support the President's decision regarding covert action notice, Director Webster testified, he "would have to advise the President of my position on that, and if he would not authorize me to speak to you, I would have to leave." Asked whether he would then inform the Committees, Director Webster said he "would do so to the extent permitted me by law and I know of no reasons why I could not, but only after I had resigned."

On the question of whether CIA covert action could be authorized by a retroactive Presidential Finding, Director Webster expressed his belief that "an 'ex post facto' finding is contrary to the clear spirit of the statutory requirement." In his view, a retroactive Finding would not give legality to the action and would be merely "damage control."

Director Webster testified that a strong legal case could probably be made for an oral Finding in an emergency, but he said he believed a written Finding should follow and he "wouldn't quit" until he had one. The purpose of a Finding, he explained, is to state in writing the basis for the action so that it can be reviewed and understood by everyone with responsibility, including the oversight committees.

Director Webster also made clear his belief that the National Security Council staff is an "entity" subject to the requirements to report to the Intelligence Committees. If the National Security Advisor failed to notify the Committee, Director Webster said he would do so himself. Director Webster endorsed procedures for regular formal review of all covert actions by the DCI and the oversight committees.

In considering Judge Webster's nomination, the Committee held three open and two closed hearings which examined in detail concerns raised about FBI links to Lieutenant Colonel Oliver North and the Iran-Contra matter. All relevant information was subsequently transmitted to the U.S. Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition for its review in the context of its ongoing investigation. The Committee examined documents made available by the FBI and the Independent Counsel, and Committee staff interviewed officials of the FBI and other elements of the Department of Justice. The closed hearings dealt with classified documents which suggested the possibility of improper efforts by staff members of the National Security Council to influence the FBI. After the initial public hearings were completed, the FBI reported to the Committee other instances where Lieutenant Colonel North sought to influence FBI investigations. These matters were addressed at the final public hearing (S. Hrg. 100-276).

The Committee reviewed numerous aspects of Judge Webster's experience as Director of the Federal Bureau of Investigation during 1978-87. These included allegations of an FBI official's "vendetta" against U.S. District Judge Harry Claiborne (subsequently convicted, impeached, and removed from office), questions about alleged FBI "targeting" of individuals for investigation and other shortcomings in the ABSCAM case, the FBI's international terrorism investigations of persons who had not committed terrorist acts in this country, allegations of improper FBI activity in the investigation of groups opposing U.S. foreign policy in Central America, FBI warrantless search practices, weaknesses in the FBI background investigation of former Labor Secretary Raymond Donovan, the FBI's maintenance of files on two Catholic bishops, and the FBI's role in handling cases in which allegations of wrongdoing reach the level of the Attorney General or his friends or associates.

After a thorough review of these matters, the Committee voted 15-0 on May 1, 1987, to report favorably to the Senate the nomination of Judge Webster to be Director of Central Intelligence. The Chairman and Vice Chairman reported the findings of the Committee's inquiries to the Majority and Minority Leaders in a letter dated May 8, 1987.

# APPENDIX

## I. Summary of Committee Activities January 1, 1987 to December 31, 1988

### A. NUMBER OF MEETING/HEARINGS: TOTAL 206

Total on-the-record meetings and hearings of the Committee during the 100th Congress were 206. Of these, 108 were oversight; 22 were business and 14 were on the budget. The Committee held 21 meetings and the staff held 27 such on the INF Treaty. There were 7 meetings on nominations, 6 on legislation and one two-hour staff interview. The committee staff also conducted other interviews continuously throughout the 100th Congress.

### B. BILLS AND RESOLUTIONS ORIGINATED BY THE COMMITTEE: TOTAL 6

*S. Res. 63,* To authorize expenditures by the Committee to carry out its prescribed duties. Actions: Referred to Committee on Rules and Administration on January 16, 1987. Hearings held on January 20, 1987.

*S. Res. 192,* To amend the Omnibus Committee Funding Resolution of 1986. Actions: Referred to Committee on Rules and Administration. Reported favorably September 24, 1987 with amendment in the nature of a substitute with written Report No. 100–169. Passed the Senate September 30, 1987.

*S. Res. 359,* To authorize the Committee to make expenditures from March 1, 1988 through February 28, 1989. Actions: Referred to Committee on Rules and Administration on January 27, 1988. Reported favorably on February 17, 1988 as S. Res. 381.

*S. 1243,* Intelligence Authorization Act, Fiscal Year 1988 and 1989. Actions: Referred to Committees on Armed Services and Judiciary. Reported by Intelligence Committee with Report No. 100–59. Reported by the Committee on Armed Services with Report No. 100–117. Incorporated in H.R. 2112 and passed by the Senate on July 23, 1987.

*S. 1721,* Intelligence Oversight Act of 1987. Actions: Passed the Senate on March 15, 1988. See Section II, A, of this report for a full explanation.

*S. 2366,* Intelligence Authorization Act, Fiscal Year 1989. Actions: Reported by Intelligence Committee with Report No. 100–334. Reported to Senate by Committee on Armed Services with Report No. 100–404. Incorporated in H.R. 4387 and passed by the Senate on August 5, 1988.

### C. BILLS REFERRED TO THE COMMITTEE: TOTAL 6

*S. 43,* to require that the positions of Director and Deputy Director of Central Intelligence be filled by career intelligence officers. Actions: Introduced on January 6, 1987. Hearings dispensed with because?

*S. 1235,* to provide that the term of service of the Director of Central Intelligence shall be seven years. Actions: Introduced May 19, 1987. Hearings dispensed with?

*S. 1458,* General Accounting Office-Central Intelligence Agency Audit Act of 1987. Actions: Introduced on July 1, 1987. Included in hearing November 13, 1987.

*S. 1818,* National Security Reform Act of 1987. Actions: Hearings held, Hearing Reports No. 100-623, No. 100-677. See Section II, B for full explanation.

*S. 1820,* National Intelligence Reorganization Act of 1987. Actions: Introduced October 27, 1987. Included in hearing November 13, 1987.

*S. 1852,* Intelligence Activities Oversight Improvement Act. Actions: Introduced November 5, 1987. Included in hearing November 13, 1987.

### D. PUBLICATIONS FROM JANUARY 1, 1987 TO DECEMBER 31, 1988

Report No. 100-7, Preliminary Inquiry Into the Sale of Arms to Iran and Possible Diversion of Funds to the Nicaraguan resistance.

Report No. 100-59, To Authorize Appropriations for fiscal year 1988 and 1989.

S. Prt. 100-42, Rules of Procedure.

Report No. 100-154, Report on Security at the United States Missions in Moscow and Other Areas of High Risks.

S. Hrg. 100-241, Nomination of Robert M. Gates.

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